

**From:** [Brush, Jason](#)  
**To:** [Greczmiel, Horst](#)  
**Subject:** Accepted: Rosemont Mine Call

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**To:** [Greczmiel, Horst](#)  
**Subject:** Accepted: Rosemont Mine Call

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**From:** [Brush, Jason](#)  
**To:** [Greczmiel, Horst](#)  
**Subject:** Accepted: Rosemont Mine Weekly Call  
**Start:** Friday, March 28, 2014 12:00:00 PM  
**End:** Friday, March 28, 2014 1:00:00 PM  
**Location:** Call in information is provided below

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**From:** [Brush, Jason](#)

**To:** [Greczmiel, Horst](#)

**Subject:** Accepted: Rosemont Mine Weekly Calls Resuming 16 Jan 2015

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**From:** [Martynowicz, Trina](#)  
**To:** [Martynowicz, Trina](#); [Timothy Shannon](#); "Cal Joyner"; "Jim Upchurch"; "Ann Acheson - CEO"; "Joe Carbone"; "Robert Bonnie"; "Meryl Harrell"; [Meg.E.Gaffney-Smith@usace.army.mil](mailto:Meg.E.Gaffney-Smith@usace.army.mil); "Ann Acheson - CEO"; [tpatelweynand@fs.fed.us](mailto:tpatelweynand@fs.fed.us); "Dave Sire"; [Thomas\\_Flanagan@nps.gov](mailto:Thomas_Flanagan@nps.gov); Diebolt, Sallie SPL; [msvogel@fs.fed.us](mailto:msvogel@fs.fed.us); Shannon, Timothy; [Jason\\_Douglas@fws.gov](mailto:Jason_Douglas@fws.gov)  
**Cc:** [Diamond, Jane](#); [Brush, Jason](#); [Leidy, Robert](#); [Goforth, Kathleen](#); [Greczmiel, Horst](#); [Marjorie.e.blaine@usace.army.mil](mailto:Marjorie.e.blaine@usace.army.mil); [Sallie SPL Diebolt](#); [David J SPL Castanon](#); [Ryerson.Teddy](#); [Blumenfeld, Jared](#)  
**Subject:** Final Rosemont Press Statement Regarding the Federal Agency Trip to Rosemont  
**Date:** Monday, January 27, 2014 6:08:43 PM

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And below is the final press statement agreed upon by the various federal agencies regarding the trip.

### **ROSEMONT STATEMENT**

This week, the White House Council on Environmental Quality (CEQ) and several other federal agencies, including the U.S. Forest Service, U.S. Environmental Protection Agency and U.S. Bureau of Land Management, will visit sites related to the proposed Rosemont Copper Mine project near Tucson. The visits will give senior officials who have not previously visited these sites an opportunity to better understand the proposed project.

These visits and meetings are separate from and are not intended to be part of the objection process under the U.S. Forest Service's Final Environmental Impact Statement (FEIS) for the project; that period, during which objections to the project can be filed, closes on Feb. 14, 2014. A number of federal agencies have oversight or jurisdiction over various aspects of the proposed project as it moves through the relevant review and regulatory processes.

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[Martynowicz.Trina@epa.gov](mailto:Martynowicz.Trina@epa.gov)

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**From:** Martynowicz, Trina  
**Sent:** Monday, January 27, 2014 4:23 PM  
**To:** 'Timothy Shannon'; "Cal Joyner"; "Jim Upchurch"; "Ann Acheson - CEO"; "Joe Carbone"; "Robert Bonnie"; "Meryl Harrell"; [Meg.E.Gaffney-Smith@usace.army.mil](mailto:Meg.E.Gaffney-Smith@usace.army.mil); 'Ann Acheson - CEO'; [tpatelweynand@fs.fed.us](mailto:tpatelweynand@fs.fed.us); "Dave Sire"; [Thomas\\_Flanagan@nps.gov](mailto:Thomas_Flanagan@nps.gov); 'Diebolt, Sallie SPL'; [msvogel@fs.fed.us](mailto:msvogel@fs.fed.us); 'Shannon, Timothy'; [Jason\\_Douglas@fws.gov](mailto:Jason_Douglas@fws.gov)  
**Cc:** Diamond, Jane; Brush, Jason; Leidy, Robert; Goforth, Kathleen; 'Greczmiel, Horst'; [Marjorie.e.blaine@usace.army.mil](mailto:Marjorie.e.blaine@usace.army.mil); Sallie SPL Diebolt; David J SPL Castanon; Ryerson.Teddy; Blumenfeld, Jared  
**Subject:** Final Rosemont AZ Itinerary for Federal Agency Participants

Attached is the final itinerary for the Rosemont Mine tour for the various federal agency participants beginning at 8am on Wednesday, as well as the meeting led by Horst on Thursday. Please note the changed start time for the Empire Ranch/tour of the Las Cienegas National Conservation Area. We were able to shave off 30 minutes, thus will be meeting at 8am.

Note: Please dress in jeans, layers, and a comfortable shirt, as Empire Ranch will be chilly in the morning or could be a low of 40' and high in the 70's. The terrain can be rugged so appropriate footwear (hiking boots) should be worn, not dress shoes or sandals. Bring a hat and wear sunscreen. Lunch will be provided by Rosemont Mine and will have a selection of foods to accommodate vegetarians. Please bring \$10 in cash for lunch and water.

See Marjorie Blaine's email from Saturday, January 25, 2014 at 5:20 PM PST for the final Corps and Mine tour itinerary.

On behalf of Jared Blumenfeld and the other EPA participants, we look forward to this trip!

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**From:** Gaudario, Abigail on behalf of Blumenfeld, Jared  
**Sent:** Friday, January 24, 2014 11:47:32 AM  
**To:** 'Cal Joyner ([cjoyner@fs.fed.us](mailto:cjoyner@fs.fed.us))'; 'Jim Upchurch ([jupchurch01@fs.fed.us](mailto:jupchurch01@fs.fed.us))'; Kopocis, Ken; Blumenfeld, Jared; Bromm, Susan; Rader, Cliff; Goforth, Kathleen; 'Ann Acheson - CEQ ([aacheson@fs.fed.us](mailto:aacheson@fs.fed.us))'; 'Joe Carbone ([jcarbone@fs.fed.us](mailto:jcarbone@fs.fed.us))'; 'Robert Bonnie ([robert.bonnie@osec.usda.gov](mailto:robert.bonnie@osec.usda.gov))'; 'Meryl Harrell ([meryl.harrell@osec.usda.gov](mailto:meryl.harrell@osec.usda.gov))'; 'Blaine, Marjorie E SPL'; 'Castanon, David J SPL'; [Meg.E.Gaffney-Smith@usace.army.mil](mailto:Meg.E.Gaffney-Smith@usace.army.mil); Ann Acheson - CEQ ([aacheson@fs.fed.us](mailto:aacheson@fs.fed.us)); [tpatelweynand@fs.fed.us](mailto:tpatelweynand@fs.fed.us); 'Dave Sire ([david\\_sire@ios.doi.gov](mailto:david_sire@ios.doi.gov))'; [Thomas\\_Flanagan@nps.gov](mailto:Thomas_Flanagan@nps.gov); David Cottingham ([David\\_Cottingham@fws.gov](mailto:David_Cottingham@fws.gov)); Larry Bright ([Larry\\_bright@fws.gov](mailto:Larry_bright@fws.gov)); 'Edwin Roberson'; 'Deborah Rawhouser ([drawhous@blm.gov](mailto:drawhous@blm.gov))'  
**Cc:** Ryerson.Teddy; Blumenfeld, Jared; Greczmiel, Horst  
**Subject:** RE: Rosemont AZ Meetings Schedule

Horst and other federal colleagues:

Attached is the latest itinerary for the Rosemont trip. We have only included the joint meetings that include the larger federal family in this itinerary. The Army Corps is taking the lead in the itinerary for the proposed Rosemont Mine site which begins at Sonoita Creek Ranch at 10:30am on the 29<sup>th</sup>. (That specific itinerary is not included in this document.)

There are a few gaps regarding participants, POCs, cell numbers, etc. Please email that information, as well as any updates/changes, to my Special Assistant Trina Martynowicz at [Martynowicz.Trina@epa.gov](mailto:Martynowicz.Trina@epa.gov). We hope to send a "final" itinerary to all of you later today.

Looking forward to our call today and to seeing everyone next week in Arizona!

*Jared*

*Abigail Gaudario*

*Office of the Regional Administrator*

*US EPA, Pacific Southwest Region 9*

*75 Hawthorne*

*San Francisco, CA 94105*

*(415) 947-4238*

*(415) 947-3588 - fax*

*[gaudario.abigail@epa.gov](mailto:gaudario.abigail@epa.gov)*

**From:** [Brush, Jason](#)  
**To:** [David J Castanon](#)  
**Subject:** Fw: Revised Itinerary: Rosemont Visit  
**Date:** Wednesday, January 22, 2014 9:10:34 AM

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**From:** Martynowicz, Trina  
**Sent:** Wednesday, January 22, 2014 9:07:35 AM  
**To:** Goldmann, Elizabeth  
**Cc:** Leidy, Robert; Jessop, Carter; Brush, Jason; Overman, Pamela  
**Subject:** RE: Revised Itinerary: Rosemont Visit

The tribal meeting will be most likely at either of their casinos. Pam will notify us as soon as she hears from the tribe.

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**From:** Goldmann, Elizabeth  
**Sent:** Tuesday, January 21, 2014 3:00 PM  
**To:** Martynowicz, Trina  
**Cc:** Leidy, Robert; Jessop, Carter; Brush, Jason  
**Subject:** RE: Revised Itinerary: Rosemont Visit

Hi Trina

Right now, we are trying to address some issues related to the visit to Empire Ranch/LCNCA. At this time, it appears highly unlikely that NGOs would participate.

The Corps just contacted me and they want to know ASAP where the tribal meeting is taking place on the 28<sup>th</sup>.

E.

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**From:** Martynowicz, Trina  
**Sent:** Tuesday, January 21, 2014 2:23 PM  
**To:** Leidy, Robert; Brush, Jason; Goldmann, Elizabeth; Jessop, Carter  
**Cc:** Diamond, Jane; Ryerson, Teddy; Gaudario, Abigail  
**Subject:** Revised Itinerary: Rosemont Visit

I've revised the Rosemont itinerary with two different options for Jared, as described below and in the word document. The EPA Headquarters Washington, DC participants could either fly in on the 27<sup>th</sup> OR the 28<sup>th</sup> (on the 28<sup>th</sup> they can depart DC by 8am and land before 2pm).



Option 1: On the 27<sup>th</sup> EPA R9, EPA HQ and Horst fly in the evening. On the 28<sup>th</sup>, attend meetings with NGOs and/or state/local government officials before the TON meeting at 3pm.

- This option would allow for Horst and EPA HQ to meet with the NGOs and government officials directly, though this would probably be without the Corps Colonel.

Option 2: On the 28<sup>th</sup> EPA R9 and HQ fly in, landing by 2pm. Meet with TON at 3pm. On the 29<sup>th</sup> EPA R9 meet with state/local government officials after lunch without EPA HQ, Horsts and the Corps.

- This option would prevent Horst and EPA HQ to meet with the NGOs and government officials since they would be touring the mine at this time.

I've also added comments and highlighted areas where I need additional information throughout the document. Can someone in the Water Division please incorporate such comments into this document? I'd greatly appreciate your feedback or others on both options before sharing a revised itinerary with Jared, who would then share such with Horst and EPA HQ Susan and Ken.

Please call with any questions.

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**From:** [Brush, Jason](#)  
**To:** [Greczmiel, Horst](#); [Raymond Suazo](#)  
**Cc:** [Goforth, Kathleen](#); [Dunning, Connell](#); [Jessop, Carter](#); [Goldmann, Elizabeth](#); [Leidy, Robert](#); [Bose, Laura](#); [Campbell, Rich](#); [Hanf, Lisa](#); [Castanon, David J SPL](#); [Blaine, Marjorie E SPL](#); [Kaiser, Russell](#); [Pendergast, Jim](#); [Evans, David](#); [Miller, Clay](#); [Diamond, Jane](#); [Martynowicz, Trina](#); [Johnson, Kathleen](#)  
**Subject:** FW: Rosemont Copper Company - Proposed allocation of surface water rights (as of 3.6.14)  
**Date:** Friday, March 14, 2014 6:04:00 PM

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Horst and Ray – Thanks for the call today. I believe others are forwarding the congressional incoming and responses, as requested. But as water rights issues were raised again today on both calls, I thought the brief table my staff put together below is probably worth sharing. The upshot is that USGS data shows the 1,122 afy rights Rosemont is offering actually yields 360 afy at best, and the trendline is drying. In other words, only a subset of the most senior right is actually “wet.”

Jason A. Brush  
Supervisor, Wetlands Office  
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~~~~~

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**From:** Goldmann, Elizabeth  
**Sent:** Tuesday, March 11, 2014 11:01 AM  
**To:** Brush, Jason; Leidy, Robert; Jessop, Carter  
**Subject:** Rosemont Copper Company - Proposed allocation of surface water rights (as of 3.6.14)

### **Rosemont Copper Mine – Surface Water Rights**

Rosemont has acquired the right to purchase 1,122 AFA of surface water rights in Cienega Creek to be used as mitigation for the proposed Rosemont Mine. **Of the 1,122 AFA, only an average of 360 AFA is “wet water” associated with the 1908 senior water right. The balance is “paper water.”**

The water rights are as follows:

**1908 (senior) water right: 597 AFA**

**1933 water right: 477 AFA**

**1935 water right: 46 AFA**

**Allocation of Surface Water Rights by Rosemont Copper Company (March, 2014 subject to change):**

**Agency 1908 Senior Surface Water Right (597 AFA)      1933 Surface Water Right (477 AFA)      1935 Surface Water Right (46 AFA)**

**Corps 400**

**USFWS/AGFD                      150**

**Pima County                      100      46**

**Remaining Water Rights 197      227      0**

**BLM -250 AFA      \*      \***

**Unallocated Water Rights = 176 AFA**

\*250 AFA - Distribution between 1908 and 1933 unknown.

**404 CWA Mitigation:**

The Rosemont Mine 404 mitigation proposal, dated March 6, 2014, commits **400 AFA of base flow and stormwater flow to the Corps** to offset 28.4 acres of indirect impacts upstream at Barrel and Davidson Canyons. Although past proposals allocate the 1908 water right, the recent proposal does not designate the water right associated with 404 mitigation.

**From:** [Brush, Jason](#)  
**To:** [Castanon, David J SPL](#); [Blaine, Marjorie E SPL](#); [Diebolt, Sallie SPL](#); [Greczmiel, Horst](#); [Calhoun, Jean](#); ["Jim Upchurch \(jupchurch01@fs.fed.us\)"](#); ["Ray Suazo \(rmsuazo@blm.gov\)"](#)  
**Cc:** [Martynowicz, Trina](#); [Diamond, Jane](#); [Johnson, Kathleen](#); [Goforth, Kathleen](#); [Jessop, Carter](#); [Goldmann, Elizabeth](#); [Leidy, Robert](#); [Pendergast, Jim](#); [Kaiser, Russell](#); [Miller, Clay](#); [Kermish, Laurie](#); [Campbell, Rich](#); [Hagler, Tom](#)  
**Subject:** FW: Rosemont mine: EPA Region 9 comments on draft ADEQ 401 Certification  
**Date:** Monday, April 07, 2014 5:42:00 PM  
**Attachments:** [Rosemontdraft401cert.EPACommentltr.PDF](#)

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Federal partners: For your information, I'm attaching EPA Region 9's comments to the Arizona Department of Environmental Quality regarding their draft CWA Section 401 water quality certification for the proposed Rosemont copper mine.

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-----Original Message-----

From: Brush, Jason  
Sent: Monday, April 07, 2014 5:19 PM  
To: 'rosemont401comments@azdeq.gov'; Michael A. Fulton; 'Linda C. Taunt'  
Cc: Diamond, Jane; Kermish, Laurie; Johnson, Kathleen; Goforth, Kathleen; Dunning, Connell; Jessop, Carter; Vollmer, Jared; Sablad, Elizabeth; Campbell, Rich; Hagler, Tom; Woo, Nancy  
Subject: Rosemont mine: EPA Region 9 comments on draft ADEQ 401 Certification

Mike and Linda - Thank you again for the extension to the comment period. I've attached EPA's comments on Jane's behalf. Please give either of us a ring if you'd like to discuss.

Best,  
Jason

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**From:** [Brush, Jason](#)  
**To:** [Castanon, David J SPL](#); [Diebolt, Sallie SPL](#); [Blaine, Marjorie E SPL](#)  
**Bcc:** [Leidy, Robert](#); [Goldmann, Elizabeth](#)  
**Subject:** FW: Rosemont  
**Date:** Wednesday, February 26, 2014 6:28:00 PM

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Mr. Cunningham (and Sturgess) have been seeking an audience with us for a few weeks. You'll see below I suggested it most appropriate to have you there, but I'm happy to hear them out either way. I'd suggest the afternoon of the 6<sup>th</sup>.

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**From:** Patrick Cunningham [mailto:[pcunningham@azhighground.com](mailto:pcunningham@azhighground.com)]  
**Sent:** Tuesday, February 25, 2014 3:57 PM  
**To:** Brush, Jason  
**Cc:** Diamond, Jane  
**Subject:** Re: Rosemont

Jason: Thanks for your email and I hope Jury Duty was, or is, fun.

Jamie and I can meet any time on March 3, 4, 5 or 6. We prefer the 4th or the 6th if that is possible.

If your jury duty went away and you would like to meet this Thursday or Friday, we can make those dates also.

Thanks. PJC

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General Counsel to Highground  
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[www.azhighground.com](http://www.azhighground.com)

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**From:** "Brush, Jason" <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>

**Date:** Saturday, February 22, 2014 at 2:38 PM

**To:** Patrick At HighGround <[pcunningham@azhighground.com](mailto:pcunningham@azhighground.com)>, "Diamond, Jane" <[Diamond.Jane@epa.gov](mailto:Diamond.Jane@epa.gov)>

**Subject:** RE: Rosemont

Hi Patrick – I apologize for the delay in my response, as I've been out of the office two of the last 3 weeks. Regrettably, it appears I'm also potentially out next week on jury duty beginning 2/24. Perhaps we can pencil in time the week of March 3<sup>rd</sup> to connect?

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**From:** Patrick Cunningham [<mailto:pcunningham@azhighground.com>]

**Sent:** Thursday, February 13, 2014 8:33 AM

**To:** Diamond, Jane

**Cc:** Brush, Jason

**Subject:** Re: Rosemont

Thanks Jane. Have a great weekend! PJC

Patrick J. Cunningham

Public Affairs Consultant and

General Counsel

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On Thu, Feb 13, 2014 at 9:24 AM, Diamond, Jane <[Diamond.Jane@epa.gov](mailto:Diamond.Jane@epa.gov)> wrote:

We'll get back to you after the holiday next week, Patrick.

Jane Diamond  
Water Director  
[415-947-8707](tel:415-947-8707)

---

**From:** Patrick Cunningham <[pcunningham@azhighground.com](mailto:pcunningham@azhighground.com)>  
**Sent:** Thursday, February 13, 2014 8:20:52 AM  
**To:** Brush, Jason  
**Cc:** Strauss, Alexis; Diamond, Jane  
**Subject:** Re: Rosemont

Jason:

Thanks for your email and thoughts on the issues. I was contemplating a discussion in addition to the ongoing 404 discussion, and a discussion that would encompass broader project impacts. It seems to me the 404 permit process is proceeding with all the right parties in the discussion. I am suggesting that we need to listen harder to EPA, and then try to address the broader EPA mitigation concerns in addition to the 404 permit process.

Jamie and I will make ourselves available after the President's Day holiday and suggest Thursday or Friday, Feb 27 or 28 in your offices.

Best Regards.

PJC

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**From:** "Brush, Jason" <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>  
**Date:** Thursday, February 6, 2014 at 1:21 PM  
**To:** Patrick At HighGround <[pcunningham@azhighground.com](mailto:pcunningham@azhighground.com)>  
**Cc:** "Strauss, Alexis" <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>, "Diamond, Jane" <[Diamond.Jane@epa.gov](mailto:Diamond.Jane@epa.gov)>  
**Subject:** RE: Rosemont

Hello Patrick – As Jamie and I discussed last week in the field, I'd be happy to talk. I

also think the discussion might be most appropriate with the Corps present, and most productive after the Corps and EPA have met on 2/12 on mitigation issues. Let's shoot tentatively for something after the Presidents' Day holiday, pending Corps agreement.

Thanks - Jason

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**From:** Patrick Cunningham [<mailto:pcunningham@azhighground.com>]

**Sent:** Thursday, February 06, 2014 11:18 AM

**To:** Brush, Jason

**Cc:** Strauss, Alexis; Diamond, Jane

**Subject:** Rosemont

Jason:

I have spoken briefly with Alexis and Jane regarding Jared's meeting with Jamie Sturgess and Rod Pace of Rosemont last week, and I would like to follow up with you. I have several voice messages for you, but I know you are busy and they may not have reached you. Please give me a call on my cell at (b) (6) regarding Rosemont when you have a moment.

Thanks for your time and best regards.

PJC

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**From:** [Brush, Jason](#)  
**To:** [Greczmiel, Horst](#)  
**Subject:** HudBay meeting in DC with EPA  
**Date:** Friday, June 12, 2015 11:36:00 AM

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Hi Horst - Has anyone at EPA HQ touched base with you that HudBay is meeting with them next Tues the 16<sup>th</sup>? I just learned this yesterday.

**Jason A. Brush**

**Supervisor, Wetlands Section**

**U.S. Environmental Protection Agency, Region 9**

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**From:** [Brush, Jason](#)  
**To:** [Castanon, David J SPL](#)  
**Cc:** [LEONIDO-JOHN, STEVEN](#); [Kemmerer, John](#)  
**Subject:** Re: Blumenfeld Mtg wtih Col Gibbs Fri 1/15  
**Date:** Monday, January 04, 2016 5:13:00 PM

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Happy new year, Dave. I believe he only has Rosemont on his mind, but I'm only just back from leave today. I'll find out more this week and let you know. If there's something you'd like to add to the agenda, please let me know.

## **Jason A. Brush**

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**U.S. Environmental Protection Agency, Region 9**

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**San Francisco, CA 94105**

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**From:** Castanon, David J SPL [mailto:David.J.Castanon@usace.army.mil]  
**Sent:** Sunday, January 03, 2016 9:43 PM  
**To:** Brush, Jason <Brush.Jason@epa.gov>; Steven John (John.steven@epamail.epa.gov) <John.steven@epamail.epa.gov>  
**Subject:** Blumenfeld Mtg wtih Col Gibbs (UNCLASSIFIED)

Classification: UNCLASSIFIED  
Caveats: NONE

Jason and Steven,

I learned that Jared has asked for a meet and greet with Col. Gibbs for 15 January at the EPA office in L.A.

Other than Rosemont, are there any regulatory (or even non-regulatory) Corps issues that Jared may want to raise in that meeting? I may attend (past Commanders have asked me to attend these meet and greets with EPA R9 leadership).

Also, do you know who else from EPA would attend?

*David J Castanon*

Chief, Regulatory Division  
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Classification: UNCLASSIFIED

Caveats: NONE

**From:** [Brush, Jason](#)  
**To:** [Rodgers, Kerry E. EOP/CEQ](#); [robert.bonnie@osec.usda.gov](#); [meryl.harrell@osec.usda.gov](#); [patrick.holmes@osec.usda.gov](#); [aacheson@fs.fed.us](#); [jcarbone@fs.fed.us](#); [cjoyner@fs.fed.us](#); [jupchurch01@fs.fed.us](#); [tparker03@fs.fed.us](#); [kdewberry@fs.fed.us](#); [msvogel@fs.fed.us](#); [Leff, Karin](#); [Suriano, Elaine](#); [Beauvais, Joel](#); [Peck, Gregory](#); [Miller, Clay](#); [Blumenfeld, Jared](#); [Ryerson, Teddy \(Separated\)](#); [Goforth, Kathleen](#); [Dunning, Connell](#); [Gaudario, Abigail](#); [Johnson, Kathleen](#); [Jessop, Carter](#); [Penman, Crystal](#); [Woo, Nancy](#); [jennifer.a.moyer@usace.army.mil](#); [Charles.R.Smith567.civ@mail.mil](#); [david.b.olson@usace.army.mil](#); [Wade.L.Eakle@usace.army.mil](#); [David.J.Castanon@usace.army.mil](#); [Sallie.Diebolt@usace.army.mil](#); [carol\\_braegelmann@ios.doi.gov](#); [mtupper@blm.gov](#); [bamme@blm.gov](#); [lbaker@blm.gov](#); [uhong@blm.gov](#); [rmsuazo@blm.gov](#); [drawhous@blm.gov](#); [jshoemaker@blm.gov](#); [tshannon@blm.gov](#); [Christy\\_JohnsonHughes@fws.gov](#); [Benjamin\\_Tuggle@fws.gov](#); [steve\\_spangle@fws.gov](#); [jean\\_calhoun@fws.gov](#); [jason\\_douglas@fws.gov](#)  
**Cc:** [Mallory, Brenda N. EOP/CEQ](#); [Patel, Manisha D. EOP/CEQ](#); [Drummond, Michael R. EOP/CEQ](#); [Heberling, Paul D. EOP/CEQ](#)  
**Subject:** RE: Rosemont Mine - 404 elevation fact sheet  
**Date:** Tuesday, January 19, 2016 4:05:00 PM  
**Attachments:** [404q factsheet.pdf](#)

---

All – As was briefly mentioned on our call Friday, attached is the EPA fact sheet on the general steps and timelines for seeking higher-level review of 404 permits.

Additional information about the elevation process can be found here: <http://www.epa.gov/cwa-404/dispute-resolution-under-section-404q>

**Jason A. Brush**  
**Supervisor, Wetlands Section**  
**U.S. Environmental Protection Agency, Region 9**  
**75 Hawthorne Street (WTR-2-4)**  
**San Francisco, CA 94105**

~~~~~

**desk: 415.972.3483**

~~~~~

**From:** [Brush, Jason](#)  
**To:** [Greczmiel, Horst G. EOP/CEO](#)  
**Cc:** [Goforth, Kathleen](#); [Jessop, Carter](#)  
**Subject:** RE: Updated Rosemont Documents for your final review - cmts due next Friday, thank you  
**Date:** Friday, November 20, 2015 3:00:00 PM

---

Hi Horst – As I mentioned on the call, EPA Region 9 has a few departures to list as well. Here are the strike-throughs for us. Note also that Crystal Penman is an HQ person (in Office of Water with Joel).

blumenfeld.jared@epa.gov; ~~ryerson.teddy@epa.gov~~; Goforth.Kathleen@epa.gov;  
Brush.Jason@epa.gov; Dunning.Connell@epa.gov; ~~Hanf.Lisa@epa.gov~~;  
~~Martynowicz.Trina@epa.gov~~; Gaudario.Abigail@epa.gov; ~~Diamond.Jane@epa.gov~~;  
Johnson.Kathleen@epa.gov; Jessop.Carter@epa.gov; Penman.Crystal@epa.gov;  
Woo.Nancy@epa.gov;

Thanks - Jason

**Jason A. Brush**  
**Supervisor, Wetlands Section**  
**U.S. Environmental Protection Agency, Region 9**  
**75 Hawthorne Street (WTR-2-4)**  
**San Francisco, CA 94105**

~~~~~

**desk: 415.972.3483**

~~~~~

**From:** [Brush, Jason](#)  
**To:** [jean\\_calhoun@fws.gov](mailto:jean_calhoun@fws.gov)  
**Cc:** [Leidy, Robert](#); [Goldmann, Elizabeth](#)  
**Bcc:** [Bose, Laura](#); [Jessop, Carter](#); [Campbell, Rich](#)  
**Subject:** Rosemont BO meeting request - EPA-FWS  
**Date:** Thursday, February 20, 2014 11:38:00 AM

---

Hi Jean – It was really nice to meet you in the field last month and chat over lunch. I wonder if you might be available to discuss privately some questions my staff and I have on the BO soon? We'd appreciate the opportunity for a short call with you and Jason D, perhaps the first week in March (I have a jury summons next week!). Many thanks in advance.

Best,  
Jason

Jason A. Brush  
Supervisor, Wetlands Office  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (WTR-8)  
San Francisco, CA 94105

~~~~~  
desk: 415.972.3483  
fax: 415.947.3537  
~~~~~

**From:** [Brush, Jason](#)  
**To:** [Patrick Cunningham](#); [Diamond, Jane](#)  
**Cc:** [Leidy, Robert](#); [Campbell, Rich](#); [Blaine, Marjorie E SPL](#)  
**Bcc:** [Goldmann, Elizabeth](#); [Jessop, Carter](#); [Goforth, Kathleen](#); [Dunning, Connell](#); [Bose, Laura](#)  
**Subject:** Rosemont call notes  
**Date:** Thursday, March 06, 2014 3:01:00 PM

---

Patrick – Just wanted to take this opportunity while it’s fresh to thank you for the call, and provide a few brief bullet points in summary for Jane’s benefit.

- Rosemont is interested in what “voluntary measures” might be taken to mitigate concerns EPA has addressed.
- EPA reiterated that we only seek mitigation required under the applicable law and regulations. The Corps expressed concerns on how any theoretical voluntary measures could be enforced.
- The Corps and EPA agreed that the significant challenges facing Rosemont now regarding mitigating the direct impacts alone should be the priority.
- EPA and the Corps reiterated that we currently have no proposal to react to, but we described again the landscape impacts proposed, and the expectation of mitigation commensurate with that impact, consistent with guidance and regulation that we’ve frequently cited and described in our letters.
- The Corps reported that under their mitigation checklist, the Sonoita site proposed by Rosemont might provide ~2 acres of WUS mitigation credit against the ~40 ac WUS direct impacts of the mine.
- In addition to “watershed approach,” we discussed the issue of preservation, and the factors needed to consider preservation acreage as mitigation, including whether the WUS on prospective preserves are under threat of loss.
- The Corps reiterated that State Trust Lands---both as a general class, and as a specific list identified by Pima county---have been up for exploration in conversations with them for a few years now. Although such lands remain conceptually “worth exploring,” (in that they could potentially address issues of preservation risk and watershed functions), EPA and the Corps agreed that their potential use for mitigation at this late date is extremely challenging.
- EPA believes that, due to the time it would take to secure yet-to-be-identified STL parcels, secure them, and develop a plan incorporating them into a WUS mitigation strategy, use of STL at this late date is not likely to be successful. For the Corps to issue a permit, it will not be acceptable to identify a parcel with the future promise of mitigation value; such a “plan” would not be final as defined by the Mitigation Rule.



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~~~~~

---

**From:** Patrick Cunningham [mailto:pcunningham@azhighground.com]  
**Sent:** Thursday, February 13, 2014 8:33 AM  
**To:** Diamond, Jane  
**Cc:** Brush, Jason  
**Subject:** Re: Rosemont

Thanks Jane. Have a great weekend! PJC

Patrick J. Cunningham

Public Affairs Consultant and

General Counsel

HighGround Inc.

830 North 4th Ave.

Phoenix, AZ 85003

602-528-3684

Mobile: 602-377-7803

[www.azhighground.com](http://www.azhighground.com)

On Thu, Feb 13, 2014 at 9:24 AM, Diamond, Jane <[Diamond.Jane@epa.gov](mailto:Diamond.Jane@epa.gov)> wrote:  
We'll get back to you after the holiday next week, Patrick.

Jane Diamond

Water Director

[415-947-8707](tel:415-947-8707)

---

**From:** Patrick Cunningham <[pcunningham@azhighground.com](mailto:pcunningham@azhighground.com)>  
**Sent:** Thursday, February 13, 2014 8:20:52 AM  
**To:** Brush, Jason  
**Cc:** Strauss, Alexis; Diamond, Jane  
**Subject:** Re: Rosemont

Jason:

Thanks for your email and thoughts on the issues. I was contemplating a discussion in addition to the ongoing 404 discussion, and a discussion that would encompass broader project impacts. It seems to me the 404 permit process is proceeding with all the right parties in the discussion. I am suggesting that we need to listen harder to EPA, and then try to address the broader EPA mitigation concerns in addition to the 404 permit process.

Jamie and I will make ourselves available after the President's Day holiday and suggest Thursday or Friday, Feb 27 or 28 in your offices.

Best Regards.

PJC

Patrick J. Cunningham  
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[PCunningham@azhighground.com](mailto:PCunningham@azhighground.com)  
  
[www.azhighground.com](http://www.azhighground.com)

---

**From:** "Brush, Jason" <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>  
**Date:** Thursday, February 6, 2014 at 1:21 PM  
**To:** Patrick At HighGround <[pcunningham@azhighground.com](mailto:pcunningham@azhighground.com)>  
**Cc:** "Strauss, Alexis" <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>, "Diamond, Jane" <[Diamond.Jane@epa.gov](mailto:Diamond.Jane@epa.gov)>  
**Subject:** RE: Rosemont

Hello Patrick – As Jamie and I discussed last week in the field, I'd be happy to talk. I also think the discussion might be most appropriate with the Corps present, and most productive after the Corps and EPA have met on 2/12 on mitigation issues. Let's shoot tentatively for something after the Presidents' Day holiday, pending Corps agreement.

Thanks - Jason

Jason A. Brush  
Supervisor, Wetlands Office  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (WTR-8)  
San Francisco, CA 94105  
~~~~~  
desk: [415.972.3483](tel:415.972.3483)  
fax: [415.947.3537](tel:415.947.3537)

~~~~~

---

**From:** Patrick Cunningham [<mailto:pcunningham@azhighground.com>]  
**Sent:** Thursday, February 06, 2014 11:18 AM  
**To:** Brush, Jason  
**Cc:** Strauss, Alexis; Diamond, Jane  
**Subject:** Rosemont

Jason:

I have spoken briefly with Alexis and Jane regarding Jared's meeting with Jamie Sturgess and Rod Pace of Rosemont last week, and I would like to follow up with you. I have several voice messages for you, but I know you are busy and they may not have reached you. Please give me a call on my cell at (b) (6) regarding Rosemont when you have a moment.

Thanks for your time and best regards.

PJC

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[www.azhighground.com](http://www.azhighground.com)

---

**From:** [Brush, Jason](#)  
**To:** [Castanon, David J SPL](#); [Diebolt, Sallie SPL](#); [Blaine, Marjorie E SPL](#)  
**Bcc:** [Jessop, Carter](#); [Leidy, Robert](#); [Goldmann, Elizabeth](#)  
**Subject:** Rosemont letter  
**Date:** Monday, March 03, 2014 4:02:00 PM

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Just reading the letter a bit more closely -- In third-to-last paragraph, shouldn't it be §332.4(c)(1) through (c)(14), rather than (c)(12)? Just trying to avoid an incomplete submittal on 4/1... -JB

Jason A. Brush  
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U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (WTR-8)  
San Francisco, CA 94105

~~~~~  
desk: 415.972.3483  
fax: 415.947.3537  
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**From:** [Brush, Jason](#)  
**To:** [Blumenfeld, Jared](#); [Diamond, Jane](#); [Woo, Nancy](#); [Evans, David](#); [Kaiser, Russell](#); [Miller, Clay](#)  
**Cc:** [Castanon, David J SPL](#)  
**Subject:** Rosemont Mine: HudBay successful in takeover of Augusta  
**Date:** Monday, June 23, 2014 12:00:00 PM

---

**From:** Jessop, Carter  
**Sent:** Monday, June 23, 2014 11:53 AM  
**To:** Goforth, Kathleen; Johnson, Kathleen; Brush, Jason; Hanf, Lisa; Goldmann, Elizabeth; Leidy, Robert; Diamond, Jane  
**Cc:** Campbell, Rich; PerezSullivan, Margot; McKaughan, Colleen  
**Subject:** Rosemont News - Augusta Resources consents to HudBay takeover bid

FYI, Rosemont's parent company, Augusta Resources, has just consented to the takeover bid from HudBay Minerals Inc.

<http://www.businessweek.com/news/2014-06-23/hudbay-agrees-to-buy-augusta-for-406-million>

## HudBay Wins Augusta Takeover Consent With Sweetened Bid

By Simon Casey and Liezel Hill June 23, 2014

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HudBay Minerals Inc. (HBM) reached an agreement to buy the rest of Augusta Resource Corp. (AZC) for about C\$436 million (\$406 million) after sweetening a hostile offer for the developer of the Rosemont copper project in the U.S.

HudBay, which already owns 16 percent of Augusta, will offer 0.17 of a warrant to acquire one of its shares for each Augusta share, in addition to its original offer of 0.315 of a share. The revised bid is valued at about C\$3.56 a share, the companies said today in a statement. That's about 10 percent more than the value of HudBay's previous offer based on its closing price on June 20.

The acquisition will allow Toronto-based HudBay to develop Augusta's Rosemont project as its next mine after recently starting up two Canadian operations, with a project in Peru close to completion. The mine, southeast of Tucson, Arizona, could account for as much as 10 percent of U.S. copper production, according to Augusta.

Augusta jumped 6.3 percent to C\$3.40 at 8:50 a.m. in Toronto, before the start of regular trading.

Augusta directors, officers and shareholders that control about 30 percent of Augusta's

fully diluted shares have agreed to support the revised offer from HudBay, the companies said today.

The revised offer is accretive to net asset value for HudBay, said Jackie Przybylowski, a Toronto-based analyst at Desjardins Capital Markets.

“We are supportive of the transaction,” Przybylowski said in a note today. “The acquisition of Rosemont fills Hudbay’s long-term project pipeline and fits well with the company’s growth strategy.”

## Opportunistically Timed

Augusta, based in Vancouver, had rejected HudBay’s previous offer as too low and opportunistically timed, saying it expected permits to develop Rosemont would be issued soon and boost its shares. Augusta ran a process to solicit higher bids and said in April it signed agreements to exchange confidential information with 10 groups, but didn’t announce any alternate transaction to HudBay’s offer.

“After a thorough process to consider all of our alternatives, we are pleased to have agreed on a mutually beneficial transaction representing a successful conclusion to our value maximizing process,” Augusta Chairman Richard Warke said in the statement.

HudBay also has a right to match any alternative deal proposed by another party and will receive a fee of C\$20 million under certain circumstances if the deal isn’t completed.

BMO Capital Markets and GMP Securities L.P. are acting as financial advisers to Hudbay and Goodmans LLP and Milbank, Tweed, Hadley & McCloy LLP are its legal counsel. Augusta is being advised by Scotia Capital Inc. and TD Securities Inc. as financial advisers and Davies Ward Phillips & Vineberg LLP and Cravath, Swaine & Moore LLP as legal counsel.

To contact the reporters on this story: Simon Casey in New York at [scasey4@bloomberg.net](mailto:scasey4@bloomberg.net); Liezel Hill in Toronto at [lhill30@bloomberg.net](mailto:lhill30@bloomberg.net)

To contact the editors responsible for this story: Simon Casey at [scasey4@bloomberg.net](mailto:scasey4@bloomberg.net) Carlos Caminada

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**From:** [Brush, Jason](#)  
**To:** [Castanon, David J SPL](#)  
**Cc:** [Diamond, Jane](#); [Martynowicz, Trina](#); [Ryerson, Teddy](#)  
**Bcc:** [Goforth, Kathleen](#); [Leidy, Robert](#); [Goldmann, Elizabeth](#); [Jessop, Carter](#); [Ebbert, Laura](#)  
**Subject:** Rosemont tour and Col. Colloton's schedule with TON tribe  
**Date:** Thursday, January 09, 2014 4:51:00 PM

---

Hi Dave - Thanks for your vm regarding tribal consultation, and sorry I wasn't able to reach you back by phone. It's a shame the Colonel only has the 29<sup>th</sup> as we think it would be most valuable for her and Jared to have the time together seeing areas likely to be impacted (Empire Gulch and the BLM NCA). Probably not doable to do all that, see the mine, consult with the tribe, and see Sonoita in one day.

My understanding is that Jared and the Colonel, after their last call, agreed to talk again mid month to plan the visit itinerary a bit more, and explore our areas of agreement and disagreement on the permit issues a bit more deeply. Jane told me this morning that Jared's office scheduled that call with the Colonel's office for Jan 21<sup>st</sup>.

I think Marjorie and Rob/Liz have exchanged some ideas in terms of recommending alterations of the itinerary proposed by the applicant. Given time and distances between sites, and several stakeholders to see (Pima, TON, etc), Jared has expressed an interest in having tribal consultation on the 28<sup>th</sup>. He will likely be signing a letter tomorrow to the tribe responding to their request for consultation.

Will you not be on the CEQ call tomorrow?

Jason A. Brush  
Supervisor, Wetlands Office  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (WTR-8)  
San Francisco, CA 94105

~~~~~  
desk: 415.972.3483  
fax: 415.947.3537  
~~~~~



**From:** [Brush, Jason](#)  
**To:** [Blumenfeld, Jared](#); [Diamond, Jane](#); [Johnson, Kathleen](#); [Greczmiel, Horst](#)  
**Cc:** [Woo, Nancy](#); [Kaiser, Russell](#); [Dunning, Connell](#); [Goforth, Kathleen](#); [Jessop, Carter](#); [Goldmann, Elizabeth](#); [Miller, Clay](#); [Leidy, Robert](#)  
**Subject:** Rosemont's response to Corps' mitigation letter  
**Date:** Wednesday, March 05, 2014 11:54:00 AM  
**Attachments:** [2013-03-04 Letter to Colonel Colloton.pdf](#)

---

FYI. Rosemont accepts the 4/1 deadline, acknowledges need for WUS acreage in the plan, and requests Corps identify mitigation sites and "assign additional staff."

-----Original Message-----

From: Goldmann, Elizabeth  
Sent: Wednesday, March 05, 2014 11:16 AM  
To: Brush, Jason  
Subject: FW: Response to Mitigation Request Letter (UNCLASSIFIED)

-----Original Message-----

From: Blaine, Marjorie E SPL [<mailto:Marjorie.E.Blaine@usace.army.mil>]  
Sent: Wednesday, March 05, 2014 10:38 AM  
To: Goldmann, Elizabeth  
Subject: FW: Response to Mitigation Request Letter (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

fyi

Marjorie

Assist us in better serving you.

You are invited to complete our customer survey, located at the following link:

[http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey)

-----Original Message-----

From: Rachel Abbott [<mailto:rabbott@rosemontcopper.com>]  
Sent: Tuesday, March 04, 2014 3:43 PM  
To: Colloton, Kimberly M COL SPL  
Cc: Blaine, Marjorie E SPL; Diebolt, Sallie SPL; Castanon, David J SPL; Rod Pace; Jamie Sturgess; Kathy Arnold  
Subject: [EXTERNAL] Response to Mitigation Request Letter

Dear Colonel Colloton,

Please find attached a letter from Rod Pace which includes a response to your original letter dated February 28, 2014. The attached was also mailed certified today.

Best regards,

Rachel C. Abbott | Executive Assistant to President/CEO P.O. Box 35130 | Tucson, AZ 85740 | Direct: 520.495.3518 | Mobile: 5(b) (6) Fax 520.495.3540 [www.rosemontcopper.com](http://www.rosemontcopper.com)

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Classification: UNCLASSIFIED

Caveats: NONE

## Brush, Jason

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**From:** Brush, Jason  
**Sent:** Monday, March 10, 2014 12:06 PM  
**To:** Raymond Suazo  
**Subject:** Tentative: Invitation: Rosemont External Meeting with Patrick Cunningham/Jamie S... @ Fri Mar 14, 2014 10am - 11am (rmsuazo@blm.gov)

## Brush, Jason

---

**From:** Brush, Jason  
**Sent:** Monday, March 10, 2014 12:24 PM  
**To:** Raymond Suazo  
**Subject:** Tentative: Invitation: Rosemont External Meeting with Patrick Cunningham/Jamie S... @ Fri Mar 14, 2014 10am - 11am (rmsuazo@blm.gov)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

APR 07 2014

Michael Fulton, Water Quality Division Director  
Arizona Department of Environmental Quality  
Surface Water Section/State 401 Certification/MS 5415A-1  
1110 West Washington Street  
Phoenix, Arizona 85007

Subject: State of Arizona Clean Water Act (CWA) Draft Section 401 Water Quality Certification for the Rosemont Copper Project, Pima County, Arizona

Dear Mr. Fulton:

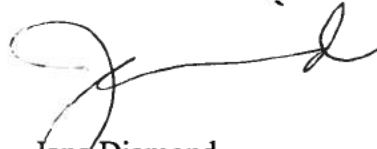
Thank you for the extended opportunity to review the draft CWA Section 401 water quality certification (certification) and supporting information for discharges associated with the proposed Rosemont Copper Project. With Arizona's designation of portions of the Cienega Creek watershed as "Outstanding Arizona Waters" (OAWs), the EPA supports the state's broadest exercise of legal discretion to protect these remarkable resources. We are submitting the enclosed comments as a continuation of our interagency coordination on the mine's potential water quality consequences to the OAWs of the Cienega Creek watershed.

After careful consideration, EPA believes the draft certification and supporting information provide an insufficient basis from which to conclude existing water quality will be maintained (*e.g.*, ongoing attainment of designated beneficial uses). In general, the draft certification relies on lagging indicators (post-discharge monitoring) to trigger corrective actions, rather than a preventative approach to ensure the protection of water quality in the OAWs. Those corrective actions also lack critical specificity with regard to water supply, the ability to arrest and reverse water quality problems should they be detected, and the enforceability of conditions given varying jurisdiction over proposed monitoring areas.

The U.S. Forest Service's Final Environmental Impact Statement (FEIS) and supporting documentation conclude that the Rosemont Copper Project will adversely modify surface and groundwater hydrology, sediment transport, and pollutant loadings in the watershed. EPA believes the available evidence indicates a substantial risk to designated beneficial use standards (*e.g.*, fish, wildlife and habitat) set by the state for Davidson Canyon and Cienega Creek. The EPA recommends that no 401 certification be issued unless the discharger can implement specific preventative actions that provide a high degree of confidence that designated uses will be maintained.

Please do not hesitate to contact me with any questions or concerns you may have regarding the enclosed comments at (415) 947-8707.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jane Diamond', with a long horizontal flourish extending to the right.

Jane Diamond  
Director  
Water Division

cc: Jim Upchurch, U.S. Forest Service  
Colonel Kimberly Colloton, U.S. Army Corps of Engineers  
Jean Calhoun, U.S. Fish and Wildlife Service  
Ray Suazo, Bureau of Land Management  
Chuck Huckelberry, Pima County

**EPA Region 9 comments on the *Draft Section 401 Water Quality Certification for the Rosemont Copper Project* dated February 21, 2014 (Draft 401 Certification), and the *Basis for State 401 Certification Decision Rosemont Copper Project ACOE Application* No. SPL-2008-00816-MB (Basis for Decision)**

**Protecting “Outstanding” Water Quality Downstream of the Rosemont Mine**

The State of Arizona has designated reaches of both Davidson Canyon and Cienega Creek as OAWs due to, among other factors, their exceptional ecological and recreational significance and the presence of federally endangered and threatened species. Water quality in these reaches currently meets or exceeds applicable water quality standards, and any lowering of water quality in OAWs is prohibited.

ADEQ states in its Basis for Decision that, “In order to issue a State 401 water quality certification, ADEQ must be satisfied that any modifications to hydrology, sediment transport or water quality, as a result of the proposed activities under the § 404 permit, will not result in adverse water quality impacts to the downstream OAWs.”<sup>1</sup>

Rosemont Mine proposes no direct discharges to OAWs. However, as ADEQ acknowledges in its Basis for Decision, “As part of its certification process, ADEQ may impose additional controls, conditions or mitigation measures, on indirect discharges that occur upstream of or to tributaries of an OAW to maintain and protect existing water quality in a downstream OAW.”<sup>2</sup>

ADEQ has proposed the following additional measures in its Draft 401 Certification to maintain and protect existing water quality in Davidson Canyon and Cienega Creek:

**5.2 Specific Conditions**

- 1) Within 180 days of the effective date of the CWA 404 permit, the applicant shall submit to ADEQ, for review and approval, a surface water mitigation program designed to maintain aquatic and riparian resources at pre-project levels in Davidson Canyon and Lower Cienega Creek. The program shall include, but is not limited to, a description of measures that will be taken to offset predicted reductions in surface water flow, in response to the project, along with a proposed schedule for implementation. The Final Environmental Impact Statement (FEIS) predicts a 17.2% reduction in average annual post-closure stormwater runoff volume as a result of the proposed activities. The surface water mitigation program shall describe measures that will offset the reduced runoff volume should it occur. The draft mitigation program shall be submitted to the address and contact person in Section 4.0.

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<sup>1</sup> Basis for Decision at pg. 2.

<sup>2</sup> Basis for Decision at pg. 2; *see also* ADEQ Draft Antidegradation Implementation Procedures (April 2008) at pg. 4 (“ADEQ will impose whatever controls are necessary on indirect discharges that occur upstream of or to tributaries of an OAW to maintain and protect existing water quality in a downstream OAW.”) Available at: [http://www.azdeq.gov/environ/water/standards/download/draft\\_anti.pdf](http://www.azdeq.gov/environ/water/standards/download/draft_anti.pdf).

The mitigation program shall identify measures, as necessary, to ensure that any water used to mitigate a predicted reduction in stream flows, meets applicable Arizona surface water quality standards, including for Outstanding Arizona Waters, where applicable.

Within 30 days of ADEQ approval of the program, the applicant shall implement the approved mitigation program in accordance with the schedule set forth in the approved program. Should the results of required monitoring and/or revised hydrologic modeling (FEIS Mitigation Measures FS-BR-22, FS-BR-27, FS-GW-02, FS-SR-05) indicate that water quality in Davidson Canyon or Lower Cienega Creek is adversely affected by the activities certified herein, ADEQ may request that the COE suspend the CWA 404 Permit and require additional mitigation.

ADEQ found that if Rosemont adheres to the conditions and mitigation in the 401 Certification (*i.e.*, Specific Conditions 5.2), and also to CWA § 404 permit conditions, the U.S. Forest Service's Final Environmental Impact Statement's (FEIS) mitigation measures, and the State's 2010 Mining AZPDES Multi Sector General Permit's requirements, then the Rosemont Copper Project should not cause or contribute to exceedences of surface water quality standards nor cause water quality degradation in the downstream receiving waters including Davidson Canyon Wash and Cienega Creek.<sup>3</sup> ADEQ based its finding on a consideration of the following 5 factors:

1. Change in ambient concentrations predicted at the appropriate critical flow conditions and the nature, persistence and potential effects of the parameter;
2. Changes in loadings and the nature, persistence and potential effects of the parameter;
3. Reduction in available assimilative capacity;
4. Degree of confidence in the various components of any modeling technique utilized; and
5. Potential for cumulative effects.

After a careful review of ADEQ's consideration of these five factors, EPA believes ADEQ's certification decision, and its finding that the current conditions and mitigation in the 401 certification (*i.e.*, Specific Conditions 5.2) will prevent water quality degradation in Davidson Wash and Cienega Creek, is not justified and the risk of water quality degradation remains high. EPA provides further consideration of the five factors, as discussed below:

#### **Factors 1 and 2: Sediment is a critical and under-analyzed water quality parameter**

As ADEQ correctly acknowledges in its Basis for Decision, changes to sediment transport in streams can adversely affect water quality by increasing total suspended sediment in surface water flows and altering the physical integrity of the system, thereby causing problems with scour or aggradation which have the potential to result in water quality degradation.<sup>4</sup> ADEQ also recognizes that potential impacts on surface water quality due to the proposed fill activities could include changes in downstream sediment yield and therefore changes in geomorphology caused by the loss of waters of the U.S.<sup>5</sup> Yet,

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<sup>3</sup> Basis for Decision at pg. 3.

<sup>4</sup> Basis for Decision at pg. 8.

<sup>5</sup> Basis for Decision at pp. 6 and 8.



ADEQ concludes that the proposed fill activities will not have a significant impact on the geomorphology of Barrel and Davidson Canyons.

To draw these conclusions of no significant impact, ADEQ relies on a very limited review of sediment transport effects. ADEQ uses the US Forest Service's (USFS) geomorphic assessment of Barrel Creek by Patterson and Annandale (2012), a 2-day survey using three variables: sediment availability, channel geometry, and water flow. Patterson and Annandale reason that since the Rosemont mine impacts 13% of the entire catchment area, there would not be significant impact to the fluvial geomorphology of the stream system.<sup>6</sup> This conclusion presumes a simple and direct proportionality of the Rosemont mine's sediment contribution to other parts of the watershed, and considers no temporal variability. In reality, the impacts of mining activities on sediment transport are likely to change over time during the active mine life and after closure, with potentially significant consequences to channel stability and aquatic and riparian habitat. Thus, suspended and bedload transport analyses are necessary to evaluate the impacts to OAWs from mine-driven sediment changes.

Without the benefit of these additional analyses, EPA believes that ADEQ would be premature to conclude that there will be little change to lower Davidson Canyon's geomorphology (and water quality) as a result of the fill.

### **Factor 3: Reduction in available assimilative capacity**

According to the FEIS, natural stormwater runoff that currently feeds the OAWs will be diminished up to 40% over the 24.5 – 30 year life of the mine.<sup>7</sup> ADEQ acknowledges a post-closure reduction in runoff volume of 17.2%, and concludes that this reduction could result in a potential loss of assimilative capacity and therefore potential degradation of water quality and/or riparian areas.<sup>8</sup>

For 404 permitting purposes, the Corps of Engineers requested that Rosemont conduct an analysis of indirect impacts from stormwater diversion. Considering the attenuation of impacts as the contributing watershed becomes larger, Rosemont calculated a reduction in average annual volume of stormwater flow in the Davidson Canyon OAW of approximately 8%, resulting in indirect impacts to 2.2 acres of surface waters within the OAWs during Rosemont mine operation.<sup>9</sup> EPA maintains Rosemont's analysis is flawed and the reduction in stormwater flow will adversely affect the entire wetted channel of the OAW. Rosemont did not calculate the indirect impacts to Lower Cienega Creek.

To address predicted reductions in runoff volume, the draft certification proposes that Rosemont develop and implement a surface water mitigation program designed to maintain aquatic and riparian resources at pre-project levels in Davidson Canyon and Lower Cienega Creek. The program shall include measures to offset predicted reductions in surface water flow (17.2% at post-closure), and a proposed schedule for implementation.<sup>10</sup>

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<sup>6</sup> Basis for Decision at pg. 8.

<sup>7</sup> FEIS, Volume 2, Chapter 3, Table 66. Summary of effects

<sup>8</sup> Basis for Decision at pg. 10.

<sup>9</sup> Email from Brian Lindenlaub, Westlands Resources, to Elizabeth Goldmann, EPA dated January 15, 2014.

<sup>10</sup> Basis for Decision at p. 11, Draft 401 Certification, Specific Condition 5.2.1.

EPA appreciates ADEQ's inclusion of this Special Condition. EPA, however, is concerned that there is inadequate detail or certainty about the prospective surface water mitigation program's ability to offset the reduction in available assimilative capacity. For instance, EPA believes that since the 401 certification's coverage extends over the entire active mine period, and since the natural stormwater runoff that currently feeds the OAWs will be diminished up to 40% over the 24.5 – 30 year life of the mine, the mitigation targets should be based on the 40% surface runoff reductions predicted during the life of the mine, as opposed to the 17.2% post-closure reductions estimated by ADEQ.

In addition, the potential strategies described in the draft 401 certification to offset loss (*e.g.*, purchasing, retiring, severing and transferring of water rights) depend on administrative actions that are not certain to occur. Without certainty of measurable water supply and delivery, and corresponding contingencies for failure to secure such water, EPA does not believe these activities may be reasonably relied upon to replace the loss of wet water in the OAWs and prevent their degradation. We therefore recommend that ADEQ have Rosemont submit its surface water mitigation program to ADEQ for approval *prior* to issuance of the 401 water quality certification to ensure that Rosemont has secured enough available "wet" water to maintain aquatic and riparian resources at pre-project levels in Davidson Canyon and Lower Cienega Creek.

#### **Factor 4: Degree of Confidence in various components of any modeling technique utilized**

In its Basis for Decision, ADEQ correctly notes the uncertainty of the USFS models in predicting impacts to downstream waters.<sup>11</sup> ADEQ concludes that based on modeling and observation (*e.g.*, models, Tetra Tech field observations, SRK Consulting review), Lower Davidson Canyon is not hydraulically connected to the regional aquifer that would be impacted by pit dewatering.<sup>12</sup> With regard to Lower Cienega Creek, ADEQ states the potential reduction in perennial stream flow would be driven by the reduction in contribution from both Davidson Canyon and Upper Cienega Creek, but this reduction in surface flows would be minimal.<sup>13</sup>

The EPA believes that the uncertainty associated with available modeling does not support the above conclusions. Uncertainty equates to greater risk, which argues for a more protective or precautionary application of standards.

As previously stated, changes in sediment loading and a reduction in assimilative capacity will adversely affect water quality in Davidson Canyon and Lower Cienega Creek OAWs. In addition, pit dewatering will adversely impact approximately 20 miles of the Upper Cienega Creek OAW. According to the FEIS, the best-fit models show that mine related groundwater drawdown will result in intermittent conditions in Upper Cienega Creek after 150 years. By 150 years after closure, the risk of dry or low-flow conditions occurring in Upper Cienega Creek would increase to 88-283 days per year. Another model estimate shows Cienega Creek becoming intermittent within 50-150 years.<sup>14</sup> As a contributing

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<sup>11</sup> Basis for Decision at p. 11.

<sup>12</sup> Basis for Decision at p. 11.

<sup>13</sup> Basis for Decision at p. 13.

<sup>14</sup> FEIS, Chapter 3, Table 108.

surface water source to Lower Cienega Creek, reductions in flow in Upper Cienega Creek will result in degradation of water quality in downstream OAW receiving waters.

### **Factor 5: Potential for Cumulative Impacts**

EPA concludes from a careful read of the evaluation of cumulative impacts contained in the Basis for Decision that the scope and magnitude of impacts associated with the proposed Rosemont Copper Project, and the context in which these impacts will occur, have not been adequately presented.<sup>15</sup> The Rosemont mine represents an assemblage of impacts that are additive to the existing trend of declining water availability due to climate change, drought, and other factors. Insufficient information is provided in the draft certification and the Basis for Decision to demonstrate that the implementation of a surface water mitigation program will replace flows being captured or truncated from the proposed mine, either as a stand-alone impact or in the context of cumulative impacts to water quality such as drought and climate change.

### **Monitoring for sediment and flow changes**

In general, impacts should be avoided wherever practicable prior to contemplating ways they can be minimized or mitigated. In the case of water quality in OAWs, impacts must be avoided by definition. The draft certification proposes corrective action should impacts to geomorphology occur, but it is unclear whether corrective measures can be put in place to prevent the degradation of OAWs should scour or aggradation be detected, or whether these measures can be effective given the potential lag time between detection and implementation of potential remedies.<sup>16</sup>

The USFS will require the Rosemont mine to monitor sediment between the mine and SR83 to identify areas of scour or aggradation (FEIS mitigation measure FS-SR-05), and Rosemont has agreed to share these data with ADEQ. However, these measures are only applicable on USFS lands; the USFS has no authority, obligation, or expertise to determine or enforce compliance with other agencies' laws or regulations.<sup>17</sup> In addition, based on the monitoring locations on USFS lands, it is questionable whether these monitoring measures and sites would capture changes to the beneficial uses associated with water quality standards at downstream OAWs.

EPA also believes Specific Condition 5.2.1 would benefit from a clearer description of the suspension procedures triggered if degradation is detected. Currently, the draft certification's proposed condition 5.2.1 states that ADEQ "may request" suspension of the CWA 404 permit if degradation is detected and require additional mitigation. However, the condition lacks specificity on implementation and timing of the suspension process and remedies, if any, should monitoring show degradation of an OAW. At minimum, adverse changes in water quality detected in OAWs should require immediate suspension of the 401 certification (and thus of the CWA 404 permit).

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<sup>15</sup> Basis for Decision at p. 13.

<sup>16</sup> Basis for Decision at p. 8.

<sup>17</sup> FEIS, Appendix B, Page B-3

## **Other Water Quality Concerns**

A Corps Memorandum dated October 29, 2009 addresses water quality certification as follows, "The state's certification of compliance with applicable effluent limitations and water quality standards will be considered conclusive with respect to water quality considerations, unless the Regional Administrator (RA) of the U.S. Environmental Protection Agency (U.S. EPA) notifies the district engineer of "other water quality aspects" that should be taken into consideration when making a decision on a permit application for an activity that results in a discharge of dredged or fill material into waters of the United States."<sup>18</sup>

EPA first notified the District Engineer of water quality concerns in a letter dated February 13, 2012. If the state's 401 water quality certification is not modified to adequately address the concerns regarding the protection of Davidson Canyon and Cienega Creek, EPA expects to request the District Engineer evaluate these particular water quality issues raised and documented by EPA both for purposes of the Corps public interest review at 33 CFR 320.4(d) and compliance with 40 CFR 230.10(b)(1) in the decision document for the §404 Clean Water Act permit action.

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<sup>18</sup> Memorandum for Major Subordinate Commands and District Commands Subject: Water Quality Certification dated October 29, 2009 at p. 1.





United States  
Environmental  
Protection Agency

# Clean Water Act

## Section 404(q) Dispute Resolution Process

*The Clean Water Act (Section 404(a)) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for discharges of dredge or fill material at specified sites in waters of the United States. In making a permit decision, the U.S. Army Corps of Engineers (Corps) solicits and considers the views of the public as well as State and Federal resource agencies. At times, EPA may oppose the Corps' intent to issue a Section 404 permit for a particular project. This fact sheet describes the process to resolve these differences.*

### Section 404(q) Memorandum of Agreement

**S**ection 404(q) of the Clean Water Act establishes a requirement that the Secretary of the Army and the Administrator of EPA enter into an agreement assuring that delays in the issuance of permits under Section 404 are minimized. In August 1992, Army and EPA entered into such an agreement. The 1992 Section 404(q) Memorandum of Agreement (MOA) outlines the current process and time frames for resolving disputes, in an effort to issue timely permit decisions.

Under this MOA, EPA may request that certain permit applications receive a higher level of review within the Department of Army. In these cases EPA determines that issuance of the permit will result in unacceptable adverse effects to Aquatic Resources of National Importance. Alternately, EPA may raise concerns over Section 404 program policies and procedures. Because this kind of review does not directly relate to a specific permit, it does not delay the review of pending permit applications.



### Aquatic Resources of National Importance

An **Aquatic Resource of National Importance** (ARNI) is a resource-based threshold used to determine whether a dispute between EPA and the Corps regarding individual permit cases are eligible for elevation under the 1992 MOA. Factors used in identifying ARNIs include: economic importance of the aquatic resource, rarity or uniqueness, and/or importance of the aquatic resource to the protection, maintenance, or enhancement of the quality of the Nation's waters. Past 404(q) elevations have identified the Chesapeake Bay, vernal pools, bottomland hardwoods, sub-alpine fens, bogs, and coastal marshes as ARNIs.

Photo by Mark Bright



Vernal pools have been identified as Aquatic Resources of National Importance (ARNIs) in past Section 404(q) elevations.

## Section 404(q) Dispute Resolution Process for Individual Permits

### EPA “May Affect” Letter

*(within the Comment Period for the Public Notice)*

EPA Region must notify Corps District Engineer by letter that the project may result in substantial and unacceptable impacts to Aquatic Resources of National Importance (ARNIs).

### EPA “Will Affect” Letter

*(within 25 days of the end of the Public Notice comment period)*

If the issues raised in the “may affect” letter remain unresolved, the Region issues a letter stating that the project will have substantial and unacceptable impacts to an ARNI. The “will affect” letter must be signed by the EPA Regional Administrator.

### Notice of Intent to Proceed

*(within 5 calendar days prior to the issuance of a permit)*

The Corps District Engineer notifies EPA Regional Administrator if the Corps intends to issue the permit contrary to EPA’s recommendations in the “will affect” letter. The Corps must provide the EPA Region with a copy of the draft permit and decision document.

### Case Elevation

*(within 15 calendar days from receipt of the notice of intent to proceed)*

The EPA Regional Administrator must decide whether to request Headquarters to seek Department of the Army level review of the District’s permit decision, and subsequently notifies the Corps District of this decision. The permit is held in abeyance pending Headquarters review.

### Review of Corps Decision

*(within 20 calendar days of receiving the EPA Regional Administrator’s request for elevation)*

The EPA Assistant Administrator decides whether to seek higher level review of the District’s permit decision by the Assistant Secretary of the Army (Civil Works).

### Army Review

*(within 30 calendar days from the EPA Assistant Administrator’s request for review)*

EPA Headquarters case elevation is reviewed by the Assistant Secretary of the Army (Civil Works). The Assistant Secretary may either inform the District Engineer to proceed with the permit, proceed with the permit in accordance with policy guidance specific to the case, or make a final permit decision. The Assistant Secretary of the Army (Civil Works) must notify the EPA Assistant Administrator immediately of his/her decision.

### Section 404(c) “Veto Process”

*(within 10 calendar days from Assistant Secretary of the Army (Civil Works) decision)*

If the Assistant Secretary decides to proceed with the issuance of the permit over EPA’s objections, EPA decides whether to initiate a Section 404(c) “veto” action.

## Section 404(q) Case Statistics

EPA has requested higher level of review by the Department of Army on 11 permit cases under the 1992 404(q) MOA as of January 2011, a modest number in light of the fact that the Corps processes approximately 60,000 permit actions per year.<sup>1</sup> Eight (8) additional permit cases were elevated to EPA Headquarters by an EPA regional office, but were resolved with the Department of Army before a final elevation package was transmitted.

<sup>1</sup> Source: Corps permit data 1988-2010, U.S. Army Corps of Engineers Headquarters, Regulatory Branch.



Broadleaf arrowhead

## Selected References

EPA Clean Water Act Section 404(q) Dispute Resolution Process Factsheet:

<http://water.epa.gov/type/wetlands/outreach/upload/404q.pdf>

1992 Section 404(q) Memorandum of Agreement:

<http://water.epa.gov/lawsregs/guidance/wetlands/dispmoa.cfm> or

[http://www.usace.army.mil/CECW/Documents/cecwo/reg/mou/moa\\_epa404q.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/mou/moa_epa404q.pdf)

EPA Wetlands Division website:

<http://water.epa.gov/type/wetlands/index.cfm>

U.S. Army Corps of Engineers Headquarters Regulatory website:

[http://www.usace.army.mil/CECW/Pages/cecwo\\_reg.aspx](http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx)

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March 4, 2014

Colonel Kimberly M. Colloton, PMP  
U.S. Army Corps of Engineers  
915 Wilshire Blvd.  
Los Angeles, CA 90017

Dear Colonel Colloton:

Thank you for your February 28, 2014 letter in which you reaffirmed the Corps' commitment to make a timely decision on Rosemont Copper's application for a 404 permit in conjunction with its plans to develop an open pit copper mine in Pima County, Arizona. We are preparing, and will submit, the comprehensive mitigation plan you requested no later than April 1, 2014.

Thank you also for your visit, along with several members of your staff, to the proposed mine site on January 29, 2014. It was indicative of the seriousness and professionalism with which the Corps approaches its important responsibility of administering the 404 program. We also appreciate the efforts of Ms. Marjorie Blaine, Senior Regulatory Project Manager, who has diligently worked to assist us for over two years.

We appreciate the comments regarding the potential of mitigation credits available for purchase from the Pima County Regional Flood Control District/ Tucson Audobon Society ILF Project. We will pursue the possibility of purchasing those credits should they become available, however, we are not confident in respect to that availability and have moved on with a permittee responsible approach that we suggest is more viable.

In your letter, you noted that the Corps "has suggested other potential mitigation opportunities for Rosemont to investigate." So there is no misunderstanding, we note that we are only aware of two such suggestions—the Pantano Dam ILF and adjustments to Sonoita Creek Ranch project--, both of which we have vigorously pursued. If the Corps has other suggestions about potential mitigation opportunities, we would welcome hearing about them.

Finally, your letter states that Rosemont's mitigation proposals to date have "unfortunately" included "more acres of upland and riparian preservation, with some enhancement, than acres of actual restoration/enhancement of WUS." For the record, we respectfully disagree with that characterization of our mitigation proposals, and to the extent that it may be based on a misunderstanding of the proposals, we will continue working closely with Ms. Blaine and other Corps staff to provide the necessary clarification. In addition, we want to assure you that we

are fully aware of the need to provide adequate "restoration/enhancement of WUS" in our mitigation plan.

To complete the final work for the mitigation efforts we have assigned a team of internal and external experts. Timely input from the Corp is critical in the final process and I would ask the Corps assign additional staff who could be dedicated to reviewing and returning comments in a timely manner.

Sincerely,



Rod Pace  
President/CEO  
Rosemont Copper Company

*Doc. No. 012/13-15.3.1*